

Sprint Comments at 4. But until the Commission completes an access reform proceeding, it would be illogical to apply this dysfunctional obligation to an emerging technology like IVVS. If in fact Internet telephony is a vehicle principally for some end users to make telephone calls without paying switched access charges, it makes no sense to extend inflated, non cost-based charges to ESPs instead of attacking the level of access charges directly. AT&T recognized this expressly, linking its caution to the Commission's traditional policies towards enhanced services:

[I]n light of the substantial loading of uneconomic costs in access charges today, moving immediately to require Internet and other enhanced services providers to pay those charges could impose costs on the public that outweigh the intended benefits. In particular, the drastic cost increases on Internet access providers that would result from imposing access charges at their current levels could significantly depress demand for these emerging services that inhibit their future development, contrary to the intended purpose of the 1996 Act.

AT&T Comments at 5 (citation omitted).

Rationalizing access charges means that the Commission must develop a different system of universal service. Section 254(b)(4) of the 1996 Act requires that the Commission engage in just this sort of basic reexamination to create new universal service support mechanisms by which "[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service."⁴⁵ As many parties have emphasized in the pending Joint Board universal service proceeding, however, EPSs are not subject to universal

⁴⁵ The House-Senate Conference Committee Report declares that "any support mechanisms continued or created under new section 254 should be explicit, rather than implicit as many support mechanisms are today." *Joint Explanatory Statement of the Committee of Conference*, H. Rep. No. 104-458, 94th Cong., 2d Sess. 131 (1996) ("Conference Report") (<http://www.technologylaw.com/techlaw/creport.html>).

service obligations under the 1996 Act, which are limited to “providers of telecommunications service,” and are not permitted to participate in the universal service subsidies that access charges were designed to support. Since it would be inappropriate to force ESPs to fund “basic” telecommunications support mechanisms from which neither they nor their subscribers can receive benefit, ESPs should continue to be exempt from access charge obligations. At the very least, however, any consideration of whether to apply access charges to EPSs must await the development and application of cost-based, competitively neutral, explicit universal service support requirements—de-linked from access charges—in the Commission’s universal service rulemaking.

CONCLUSION

For these reasons, as well as those in their Joint Opposition, Netscape and Voxware recommend that the Commission (1) dismiss the ACTA Petition, (2) forebear from application of Title II regulation to and preempt state regulation of Internet

communications services, and (3) defer any consideration of the application of access charges to EPSs to a broader rulemaking on access charge reform.

Respectfully submitted,

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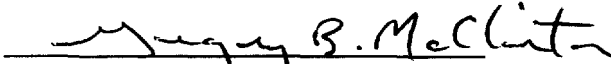
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